

7. REVISED PRELIMINARY PLAN APPROVAL - CORPORATE LAKES AT METCALF - Vicinity of the northeast corner of 123rd Street and Metcalf Avenue

GENERAL COMMENT: The applicant is requesting this item be remanded to the Planning Commission. This would allow the applicant to submit a new site plan to address staff's concerns.

1. APPLICANT: Pars Consulting Engineers, Inc., is the applicant for this request.
2. REQUESTED ACTION: The applicant is requesting revised preliminary plan approval to allow a new office building.
3. LOCATION: The subject property is located in the vicinity of the northeast corner of 123rd Street and Metcalf Avenue.
4. EXISTING ZONING: This property is currently zoned CP-O, Planned Office Building District.
5. ANALYSIS: The applicant is requesting revised preliminary plan approval for the Corporate Lakes Office Park. The applicant has provided plans proposing a new building at the southwest corner of the site near the intersection of 123rd Street and Metcalf Avenue. This property is platted as Tract A, Corporate Lakes but will be replatted as a lot if this application is approved. No other changes are occurring on-site.

The new building at the southwest corner of the site is proposed to be 5,000 square feet in size. Therefore, there will be a total of 271,000 approved square feet for the Corporate Lakes Office Park. A revised preliminary plan was approved in 2005 to allow a total of 263,878 square feet. The difference, above the 5,000 square feet associated with the new building, is due to the numerous changes that have occurred on this site and different square-footages provided by the different engineers and architects handling these projects.

Tract A has been utilized as an emergency access for the Corporate Lakes Office Park since it was developed. There is currently an asphalt drive that runs across the dam for Corporate Lakes. The drive runs from Metcalf Avenue to Lot 13 of Corporate Lakes. The applicant is proposing to construct a two-story 5,000 square-foot building with 20 parking spaces located on the east side of the building. The emergency drive will still be maintained and will be increased in width to at least 24 feet wide from Metcalf Avenue to the parking lot.

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The building is proposed to be constructed of brick veneer with some cast stone details. Due to the significant environmental issues for this proposal there have not been discussions on the building elevations. If approved, staff will work with the applicant at the time of final development plan approval on additional façade details. Also, additional information will be provided for lighting and landscaping at the time of final development plan approval.

TRANSPORTATION IMPACTS: Because of its location on Metcalf Avenue relatively close to 123rd Street, the driveway serving this site will be limited to right-turn-only movements. That will mean that all vehicles entering the site from the north on Metcalf Avenue will need to make u-turns at 123rd Street and all vehicles exiting to the south will need to make u-turns at 121st Street. Both of those intersections include traffic signals. 123rd Street has fully protected left-turn movements (turns can occur only with a green arrow) and 121st Street has protected-permissive left-turn movements (turns can occur both with a green arrow and with the later green ball). Since u-turns are legal unless they specifically are prohibited by signage, those situations should provide for safe u-turn movements for the small number of vehicles that will make those maneuvers (the proposed office building contains only about 5,000 square feet of area, so will not generate much traffic).

ENVIRONMENTAL IMPACTS: A Preliminary Stormwater Management Study has been accepted for this development. However, staff has significant concerns related to the requested stream corridor deviation and long-term bank stability, and therefore recommends denial of this application. The engineering staff's concerns include:

1. The long-term stability of the adjacent stream is questionable due to multiple stream relocations and subsequent stream migration in response to past relocations.
2. The applicant's engineer has performed a bank stability study and concluded that the northern channel bank may be susceptible to future erosion.
3. The stream corridor ordinance does not allow the use of hard armoring (i.e. riprap, gabions, etc.) to reduce the stream corridor boundaries.

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4. The proposed stream corridor setback on the northern side of the stream is between 30 percent and 60 percent less than required by the ordinance, and no provisions have been made to offset this encroachment elsewhere in the project.
5. Staff believes it is important to preserve as much stream corridor as possible to allow for potential stream migration in the future.

A detailed discussion of stream corridor issues and bank stability issues follows:

Stream Corridor and Bank Stability Issues:

The original preliminary plan for Corporate Lakes was approved in 1987. A Revised Preliminary Plan was then approved in 2001. Both plans predated the stream corridor ordinance enacted in 2002. The original plan approved in July of 1987 showed a conference center on Tract A. A subsequent plan approved in September of 1987 showed this development site as a tract, primarily containing floodplain without a building. Since that approval in September of 1987, no buildings have been shown on this tract on any plans. Although the intended use for this tract was not specified on the plat, it appears that it may not have been envisioned as a developable land tract. Because the current plan is a significant change to the existing preliminary plan, the proposed plan triggers a requirement to conform to the stream corridor ordinance.

The site is located between an existing lake to the northeast and a tributary to Tomahawk Creek to the southwest. From historical aerial photos, it appears the lake was constructed between 1941 and 1954, and enlarged between 1954 and 1977. Prior to construction of the lake, the existing stream meandered through an area currently occupied by the lake. When the lake was originally constructed, the stream was relocated to the south side of the dam. Later, when the lake was enlarged, the stream was again relocated and straightened. From air photos, it appears the relocated stream had begun to migrate during the 1980's and 1990's (prior to construction of 123rd Street) to reclaim a natural meander pattern.

When Metcalf Avenue was widened in 1990 adjacent to the site, a portion of the stream was armored using gabions. Subsequently, when 123rd Street was built in 1999, the entire south bank of the stream was armored using riprap.

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Although the entire south bank of the stream is now armored, limiting the ability to migrate toward 123rd Street, most of the north bank remains unprotected. Although armoring the north bank could “lock in” the stream to its current location, the stream corridor ordinance disallows the use of armoring as a reason to reduce setback requirements. Currently, there is little evidence of erosion or stream bank instability on either the north or south stream bank. However, the stream was significantly disturbed with the construction of 123rd Street eleven years ago, and it often takes many years for streams to fully adjust once they have been disturbed.

The north bank of the stream, as well as, the entire development site, consists of fill material placed as part of the dam construction. Little information has been provided about the composition or compaction of these existing materials since it was constructed over 30 years ago. To assess the erosion potential of this material, staff requested the applicant perform a bank stability study. The geotechnical analysis provided by the applicant’s engineer confirmed that the existing material may not be sufficient to resist future erosion without additional armoring at some point in the future.

Staff has concluded that stream bank erosion and stream movement on the north side of the stream is a concern, and believes this is a sufficient reason to avoid significantly reducing the required 100-foot stream corridor setback.

In order to approve a stream corridor deviation, the commission must find that it meets all five (5) criteria outlined in Section 18.365.100.B. of the Unified Development Ordinance (UDO). A copy of the responses provided by the applicant and the engineering staff evaluation of these requirements are included as Attachments A and B. Staff believes this application meets requirements 1-3 and 5, but does not meet requirement 4 – that the deviation will comply with the spirit and intent of the stream corridor ordinance, and therefore should not be approved.

Additionally, the city also has the discretion of using project evaluations shown in Section 18.365.100.C. of the UDO when making decisions about stream corridor deviations. The Planning Commission may use any combination of these in determining whether to approve an application. A copy of the responses provided by the applicant and the engineering evaluation of these requirements are included as Attachments C and D. Staff believes this application does not meet a number of these factors related to the potential for damage from future erosion.

Stormwater Treatment Requirements:

Because the proposed plan is a substantial change to the previously approved preliminary development plan according to Section 18.140.200 of the UDO, the property is subject to the stormwater treatment ordinance. Staff has concerns about the proposed stormwater treatment mitigation plan, and will require further investigation prior to final development plan approval if this application and deviation are approved. Staff is concerned about the construction of permeable pavement or any infiltration facilities in a dam structure that may increase seepage through the fill section.

6. **STAFF RECOMMENDATION:** Based upon the Environmental Impacts, staff recommended denial of Revised Preliminary Plan, Corporate Lakes at Metcalf.

7. **PLANNING COMMISSION RECOMMENDATION:** The Planning Commission considered this item at a public hearing on February 22, 2010. A neighbor to the south raised concerns about the erosion and flooding in her back yard. The Planning Commission reviewed the testimony and voted 8 to 2 to recommend denial of Revised Preliminary Plan, Corporate Lakes at Metcalf. The Planning Commissioners voting in opposition to the recommendation of denial felt that the application met the requirements to grant a stream corridor deviation after seeing all the man-made changes to the stream, the market should determine if the building is feasible to build, and that the bank stability could be engineered. The commissioners supporting the recommendation of denial felt there was too much square-footage proposed, was not sure if the building was feasible to build, the request did not meet the spirit and intent of the stream corridor ordinance, the 30 to 60 feet deviation request was too much and had concerns about the bank stability of the fill for the dam.

If the City Council finds the request acceptable and grants the deviation, staff would recommend the following stipulations:

- a. The development shall be in accordance with Exhibit "A" (Site Plan) and Exhibit "B" (Building Elevations), which are filed in the office of the Planning Commission Secretary at City Hall and which are incorporated by reference as if set out in full herein. In addition, the development shall comply with all regulations and standards of the City of Overland Park, unless specifically exempted by the Governing Body.

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- b. Development of the tract shall be limited to 271,000 square feet.
- c. The location and geometrics of all driveways and parking areas are subject to review and approval by the Planning and Development Services Department. The Metcalf Avenue driveway shall be limited to right-turn-only movements by the existing raised median on Metcalf Avenue.
- d. Prior to the issuance of a Building Permit for any new building floor area, the developer shall submit a payment for unspecified transportation improvements, as detailed in stipulation "n" of Rezoning No. 1986-67.
- e. One or more weeks prior to submitting an application for final development plan approval, the applicant's engineer shall submit a Revised Preliminary Stormwater Management Study that addresses staff's concerns outlined in the letter sent on January 20, 2010.
- f. At the time of final development plan submittal, a planting plan for the applicable stormwater treatment facilities shall be provided along with the landscape plan for the development.
- g. Prior to recording the final plat, staff must approve the Stream Corridor Maintenance Agreement. The Stream Corridor Maintenance Agreement shall be submitted by the city for recording at the Johnson County Register of Deeds with the recording fee paid by the developer.
- h. Concurrent with the submittal of construction plans for a Site Development or Building Permit, whichever comes first, the applicant shall provide a Final Stormwater Management Study that addresses any outstanding items from the Revised Preliminary Stormwater Management Study and includes any design changes.
- i. Prior to the issuance of a Land Disturbance or Site Development Permit, the owner/developer shall provide a Hold Harmless and Indemnification Agreement that holds the city harmless from any and all damage, loss, or liability of any kind whatsoever, including, but not limited to, any loss occasioned by reason of damage or injury to persons or property which may occur as the result of

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granting the revised preliminary plan approval with regard to stream corridor setbacks and bank stability that will be reviewed and approved to the satisfaction of the city's legal staff. The agreement shall be executed with the recording fee paid by the developer.

- j. Prior to the issuance of a Site Development or Building Permit, whichever comes first, a Stormwater Treatment Maintenance Agreement shall be submitted, reviewed and approved by the engineering staff with the associated recording fees paid by the owner/developer.
- k. Prior to the issuance of a Final Certificate of Occupancy, the owner shall provide a Certification of Completion and Compliance for all constructed stormwater treatment facilities. Subsequently, the owner shall have a maintenance certification submitted one year after construction is completed, and every two years thereafter. The certification shall be on a form as approved by the city and shall be performed by a registered professional engineer in the State of Kansas, unless the director approves other qualified individuals to perform the certification.
- l. Prior to the issuance of a Final Certificate of Occupancy, a Maintenance Surety shall be provided by the owner/developer in accordance with Section 16.210.080.E. of the O.P.M.C.
- m. The property shall be replatted prior to the submittal of construction plans.
- n. Concurrent with application for a final development plan, a geomorphological study of the stream by a qualified river geomorphologist shall be submitted unless waived by the Director of Planning and Development Services. The scope of the study and the river geomorphologist's qualifications shall be approved by staff prior to submission.